

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY K. SWEENEY,

Plaintiff,

vs.

DECISION AND ORDER
04-CV-6357 CJS

EASTMAN KODAK COMPANY,

Defendant.

On October 31, 2006, the Court issued an Order to Show Cause pursuant to Western District of New York Local Rule of Civil Procedure 41.2 directing plaintiff to show cause why this case should not be dismissed for failure to prosecute. The last docketed activity in the case prior to that was the Court's Order scheduling a calendar call for July 6, 2006. No one appeared for that calendar call, but later on that day, William Coleman, Esq., informed the Court that he had received a letter from plaintiff seeking to join the class action pending against the defendant, but that she was on vacation out of state and could not attend the calendar call. It was also Mr. Coleman's understanding that plaintiff would move to voluntarily dismiss her individual action against defendant. Following that communication, the Court received no further word from plaintiff until November 13, 2006, when plaintiff responded to the Clerk's Order. In her letter, plaintiff stated:

In response to the order to Show Cause dated 10/31/06; I am no longer pursuing this as an individual lawsuit. I am now part of the class action suit against Eastman Kodak. On my behalf, I thought this was communicated to court by Attorney Coleman, [E]sq. in July.

(Letter from Dr. Mary K. Sweeney to Rodney Early, Clerk of Court (Nov. 8, 2006.)

In view of the explanation from plaintiff, the Court construes her letter of November 8, 2006, docketed as No. 5 in the Clerk's Docket, as a voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), and accepts the same. Accordingly, it is hereby ORDERED, that this action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(i); and it is further

ORDERED, that a copy of this Order be served by U.S. Mail on William T. Coleman, Esq., of Counsel to Berger & Montague, P.C., 1622 Locust St., Philadelphia, PA 19103

IT IS SO ORDERED.

DATED: Rochester, New York
December 8, 2006

ENTER.

Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge.